IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 281 of 2005

RAJ.STATE ROAD TRANS.CORPORATION BIKANER
V/S
RAM LAL & ANR.

Mr. SANGEET LODHA and Mr.ARJUN SINGH, for the appellant

Date of Order : 15.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant. Perused the impugned judgment, and with the assistance of learned counsel for the appellant also perused the pleadings of the parties, the evidence of A.W.2, Rameshwar Lal, and appellant's driver, so also the documents, including the site plan, Ex.4.

It is contended by the learned counsel for the appellant that the finding of the learned trial Court on issues No.1 and 3 about negligence is wrong.

Suffice it to say that A.W.2, Rameshwar Lal is an eye-witness, who has given the detailed description of the accident, and has established that the accident was the out come of the negligent driving of the bus. The driver is said to have deposed that the truck was standing on the road, and the deceased alighted from the truck, and emerged from backside of the truck, with the result that despite applying brakes, the deceased was hit from the conductor-side bumper of the bus. Learned counsel was pointedly asked, as to whether the bus was going from behind the truck, or from the opposite direction. Learned counsel answered that the bus was going from behind the truck, and therefore, the deceased emerging from the truck could not be seen. In my view, in the first instance, this is not the pleading taken in the written-statement of the driver, inasmuch as, the pleading taken in the written-statement of the driver is, that the deceased while going along the road suddenly turned, and on that count, the accident occurred, as

it was not possible to halt the bus stand still. Secondly, a look at the site plan, Ex.4 shows that the bus was coming from the opposite direction, inasmuch as, the truck is standing at point-A, which is in the North side of the road, and the accident is said to have occurred on point-X, which is at a South-Eastern distant point from the point-A. Then in Ex.4 arrow marks are marked showing the bus to be going from East to West, while the deceased is shown to be coming from West to East Southwards. This does show that the driver could very well see the lady coming from towards the truck in front of the bus, while she was traveling from West to East, and the bus was traveling from East to West. Thus, it is clear that the story as propounded by the driver in the evidence also does not convince. That being the position, the finding recorded by the learned trial Court on issues No.1 and 3 does not require any interference.

The next submission made is that the amount awarded is excessive. The deceased was claimed to be earning a net amount of Rs.3000/- per month by selling milk of the cattle, and undertaking tailoring work, apart from the services being rendered to the family. However, in view of the fact that no record has been produced about the income, the learned trial Court did not believe the income to be Rs.3000/- but assessed it only at Rs.2000/-, and after excluding personal expenditure to the extent of 1/3rd, the dependency has been assessed, and looking to the age of the deceased, being 28 years, the multiplier of 18 has been employed, which cannot be said to be in any manner erroneous. Thus, in my view, this finding also does not require any interference.

The appeal thus has no force, and is dismissed summarily.

(N P GUPTA),J.

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